

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.6.2007

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.10264 of 1997

G.Savithri

.. Petitioner

vs.

- 1.The Industrial Tribunal of
Tamil Nadu
Madras-600 104
- 2.The Director
National Silk Worm Seed Project
Central Silk Board, Mysugar
Commercial Complex, II Floor
J.D.Road
Bangalore
- 3.The Senior Research Officer
Silk Worm Seed Production Centre
8/213, Trichy Road
Coimbatore-640 045.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V.Kalyanaraman, for
M/s.Iyer & Dolia.

For Respondents : Mr.D.Balaraman, for R2 & R3.
No Appearance for R1.

ORDER:

This Writ Petition has been filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned award dated 29.7.1991 from the Industrial Tribunal of Tamil Nadu, Madras in I.D.No.22 of 1988, to quash the same and to direct the

respondents to reinstate the petitioner in service with full back-wages and continuity of service and other attendant benefits.

2.This writ petition has been filed challenging the order of Industrial Tribunal dated 29.7.91 made in Industrial Dispute No.22/98 by which the Industrial Tribunal held that the non-employment of the writ petitioner who is a casual worker due to non-availability of the work is justified.

3.The case of the writ petitioner is that he was employed by 2nd respondent-board to work as a field worker in their Sericultural Research Centre, Coimbatore from 14.8.75 and she was working there continuously for 7 years till 30.7.72. She was transferred to 3rd respondent's Silk Worm Seed Production Centre, Coimbatore, which is an another unit of 2nd respondent, and she continued to work from 1.8.82 as a grainage worker till 15.9.84. on 15.9.84, she was informed that her services were not required and she need not come for work from 16.9.84. She raised a dispute before the Regional labour Commissioner, Bangalore, then with the Regional labour Commissioner, Madras on 17.8.85. Since the conciliation failed and failure report was sent to the Central Government and an order of reference dated 24.3.88 was made to the Industrial Tribunal. The Industrial Tribunal by its order dated 29.7.91 held that the non-employment of the writ petitioner due to the non-availability of the work is justified and that respondents 2 and 3 should have paid one month pay and compensation when refusing employment from 16.9.84 by enforcing Sec.25 of the Industrial Disputes Act. The tribunal further observed that being a casual worker, it was not possible to reinstate her into service. Aggrieved by the said order dt.29.7.91 the above writ petition has been filed by the above writ petitioner on 9.7.97.

4.Heard the learned counsel for the petitioner and the learned counsel for respondents 2 and 3. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

5.A perusal of the award under challenge reveals that the writ petitioner was engaged only as a casual labourer. The tribunal came to such a conclusion on the basis of Exs.W9 and W10. Therefore the tribunal accepted the stand of respondents 2 and 3 that for want of available work, the writ petitioner was not offered any work from 16.9.84. The tribunal considering the fact that Sec.25 of the Industrial Disputes Act is violated and considering the fact that she was only a casual worker, directed respondents 2 and 3 to pay one month's pay and retrenchment compensation as on 16.9.84 with interest at 9% till the date of payment.

6.In 2006(4) SCC 1 {Secy., State of Karnataka v. Umadevi(3)} a 5 judges Bench of the Hon'ble Supreme Court held that merely because of a temporary employee or a casual wage worker is continued for period beyond the term of his appointment, he would not be entitled to be observed in regular service or made permanent merely on the strength of such continuance if the original appointment was not made by following the due process of selection as envisaged by the relevant rules.

7.In the light of the above order passed by the tribunal dated 29.7.91, and the above said judgment of the Supreme Court, it is not possible for this court to direct respondents 2 and 3 to reinstate the writ petitioner in service with full back-wages, continuity of service and other attendant benefits.

8.Further the writ petition is also liable to be dismissed on the ground of laches as the same has been filed on 9.7.97 challenging the order of the tribunal dated 29.7.91. Even though some reasons have been given to explain the delay of nearly 6 years in filing the writ petition, I am not satisfied with the explanation given by the writ petitioner as it is without any substance or without producing legally acceptable and uncontroverted evidence.

8.Hence I do not find any merit in this writ petition and the same is dismissed. No costs.

Sd/-
Asst. Registrar.
/true copy/

Sub Asst. Registrar.

sks

To

1.The Industrial Tribunal of
Tamil Nadu
Madras-600 104

1 cc to Mr.D.Balaraman, Advocate, sr. 36350

W.P.10264/97.

JSK (CO)
kk 6/7